



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Int'l application of:
Dale Du Bois et al.

Serial No.: **10/521,619**

Filed: **July 10, 2003** (International
Filing Date)

For: **THERMAL PROCESSING SYSTEM
AND CONFIGURABLE VERTICAL
CHAMBER**

Art Unit: **To be assigned**

Examiner: **To be assigned**

Date: **February 26, 2007**

RENEWED PETITION UNDER 37 CFR 1.47(a)

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OFFICE OF PETITIONS

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The following is a renewed petition under 37 C.F.R. § 1.47(a) to accept the enclosed Declaration for Patent Application ("Declaration"), which is missing the signature of a joint inventor. This paper is filed in response to the Decision on Applicants' Renewed Petition dated January 22, 2007 received from the United States Patent Office in the above-referenced application.

A summary of pertinent facts is set forth below. Applicant respectfully requests that the Petition be reconsidered in light of the remarks set forth below.

The examiner states that no additional petition fee is due; however the Commissioner is authorized to charge any additional required fees, or credit any overpayment, to Morgan, Lewis & Bockius LLP Deposit Account No. 50-0310 (Order No. 67538-5177-US).

The last known address of the non-signing joint inventor is:

Jeffrey Kowalski
122 Zanzibar Road
Aptos, California 95003-5541

STATEMENT OF FACTS

As set forth in the Petition filed on February 6, 2006 and the Renewed Petition filed on October 10, 2006, the undersigned prepared and filed the present application. In the present application and in this petition, the undersigned represents the interests of Aviza Technology, Inc. ("Aviza").

Upon information and belief, the subject matter of the present application was conceived and developed by Dale R. Du Bois, Jamie H. Nam, Craig Wildman, Taiquing Qiu, and Jeffrey R. Kowalski ("inventors"). On July 10, 2003, PCT application No. PCT/US2003/021575 was filed, directed to the subject matter and naming all inventors (the PCT Application). The PCT Application claims priority to U.S. Provisional Patent Application Serial No. 60/396,536 filed July 15, 2002, and Serial No. 60/428,526 filed November 22, 2002 (the Priority Applications). On January 14, 2005 a United states National Phase application was filed under 35 U.S.C. 371 (the present application). At the time of filing of the PCT Application and the Priority Applications, the inventors were employed by and obligated to assign the invention to ASML U.S., Inc. ("ASML").

Subsequently on October 10, 2003, ASML and its parent company ASML Holding N.V. entered into an Asset Purchase Agreement whereby all of the assets, including patents and patent applications, of the Thermal Division were sold to Thermal Acquisition Corporation. The patents and patent applications were assigned to Thermal Acquisition Corporation as shown in the attached assignment document in Exhibit A. Thermal Acquisition Corp. then changed its name to Aviza on October 15, 2003. See Exhibit B.

On January 14, 2005 and February 7, 2005, the undersigned sent the Declaration and Assignment to Ms. Morgan Libby for execution by the inventors. Ms. Libby was the Intellectual Property Administrator for Applicant. Joint inventors Dale R Du Bois, Craig Wildman, Jamie Nam, and Taiquing Qiu, have executed the Declaration. Their signed Declaration is attached. Jeffrey Kowalski has not executed the Declaration.

Ms. Libby informed the undersigned that Mr. Kowalski no longer is employed by Aviza. Ms. Libby informed the undersigned that she requested Mr. Kowalski sign the Declaration and Assignment associated with the present application but that Mr. Kowalski never returned her call

and did not sign the papers. Ms. Libby then requested in January 2006 that the undersigned attorney's office attempt to reach Mr. Kowalski and obtain his signature.

On January 17, 2006 the undersigned sent the Declaration and Assignment to Mr. Kowalski at his last known address for execution. In the letter, Mr. Kowalski was asked to sign and return the Declaration and Assignment by January 27, 2006. On January 17, 2006 the undersigned also telephoned Mr. Kowalski at his last known telephone number and left a message indicating the nature and urgency of the matter and requesting his execution of the Declaration and Assignment that was sent to him on the same day. The undersigned informed Mr. Kowalski of the final due date of February 5, 2006.

On January 23, 2006 the undersigned again telephoned Mr. Kowalski. This time the undersigned reached Mr. Kowalski on the phone. Mr. Kowalski acknowledged receipt to the Declaration and Assignment. The undersigned again informed Mr. Kowalski of the final due date of February 5, 2006. Mr. Kowalski said that he would review the documents and get back to me.

On January 25, 2006 the undersigned's secretary, Kari Aguiar, telephoned Mr. Kowalski to inquire regarding the status of the Declaration and Assignment. Mr. Kowalski did not answer the phone, and Ms. Aguiar left him a message requesting his signature on the Declaration and Assignment.

Mr. Kowalski did not sign and return the Declaration or Assignment, nor return the phone calls. On January 27, 2006 the undersigned again forwarded to Mr. Kowalski the Declaration and the Assignment via Federal Express to the above-mentioned last known address. In the letter, Mr. Kowalski was asked to sign and return the Declaration and Assignment by January 30, 2006. Mr. Kowalski did not sign and return the Declaration or Assignment. Copies of the letters sent to Mr. Kowalski are attached in Exhibit C.

On February 1, 2006, February 3, 2006 and February 6, 2006, telephone calls were made by Ms. Aguiar to Mr. Kowalski requesting his signature on the Declaration and Assignment. Mr. Kowalski did not sign and return the Declaration or Assignment.

Upon receipt of the Decision on Petition received April 6, 2006, the undersigned contacted Aviza to confirm that it is Aviza's policy to provide the inventors with a copy of the

full patent application. Aviza confirmed that it does so. Further, the undersigned, who was involved in preparation of the subject patent application, recalls working with Mr. Kowalski and the other inventors during the preparation of the patent application. The undersigned placed phone calls to Mr. Kowalski in an attempt to confirm that Mr. Kowalski did in fact have a copy of the full patent application specification and drawings. In each instance, the undersigned had to leave a voice mail message, and the calls were never returned.

Thus, in order to ensure that Mr. Kowalski was presented with the full patent application papers including the specification and drawings, on September 22, 2006 the undersigned sent another letter to Mr. Kowalski with a copy of the full Patent Application specification and drawings as filed along with another copy of the Declaration and Assignment attached to his last known address. The letter was sent by Express Mail. In the letter, Mr. Kowalski was asked to review the patent application specification and to sign and return the Declaration and Assignment. The undersigned also made a phone call on this day to alert Mr. Kowalski of the documents. Having not heard from Mr. Kowalski, another letter was sent via Express Mail on September 28, 2006, again attaching the full Patent Application specification and drawings as filed with another copy of the Declaration and Assignment. The letter was marked Urgent. Another phone call was placed, and a message was left indicating the urgency of the matter.

Despite these bona fide attempts to present the full patent application specification and figures as filed, the Declaration and Assignment to Mr. Kowalski for his execution, Mr. Kowalski has not returned a signed copy of the Declaration or Assignment.

Mr. Kowalski is obligated by agreement to assign his entire interest in the subject matter of the present application to ASML, which sold and assigned the entire interest to Aviza.

REMARKS

In the Decision dated January 22, 2007, the Examiner stated that Applicant's petition under 37 CFR § 1.47(a) is incomplete because the copy of the declaration signed by Craig Wildman contains only three of the four pages. The Examiner further stated that all other requirements have been met, including the requirement for factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort.

Accordingly, Applicants include herewith a complete copy of the declaration signed by Craig Wildman, which is attached hereto, and is also included in Exhibit C.

CONCLUSION

Applicants respectfully submit that Jeffery Kowalski's conduct constitutes a refusal to joint the application, and thus Applicants submit this petition under 37 C.F.R. § 1.47(a).

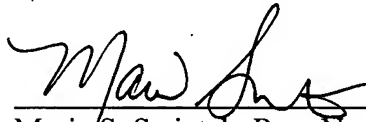
Applicants, that is, joint inventors Dale R. Du Bois, Craig Wildman, Jamie Nam and Taiquing Qiu petition to make this application on behalf of themselves and of the non-signing, joint inventor Jeffrey Kowalski, who refuses to join in the present application.

In accordance with M.P.E.P. § 409.03(a)(A)(2), the Declaration is signed by all available joint inventors with the signature blocks of the non-signing inventor left blank. Applicants petition to have the Declaration be treated as having been signed by all available joint inventors on behalf of the non-signing inventor.

Applicants respectfully submit that a filing date for the present application is necessary to preserve Applicants' rights, and denial of this petition would result in irreparable damage to Applicants. In particular, the filing date of the present application is necessary to preserve the claimed benefit of the provisional application.

Applicant is of the opinion that no fee is due however if this is incorrect, the Director is authorized to charge any underpayment of fees or overpayment of fees to our Deposit Account No. 50-0310 (Order No. 067538-5177-US).

Respectfully submitted,



Maria S. Swiatek, Reg. No. 37,244
under 37 C.F.R. §1.34

Morgan, Lewis & Bockius LLP
Customer No. 24341
2 Palo Alto Square
3000 El Camino Real, Ste. 700
Palo Alto, CA 94306
Telephone: (650) 843-4000
Facsimile: (650) 843-4001

COPY

Attorney Docket No.: A-71748/MSS
Dorsey & Whitney Docket No. 463035-770
Serial No.: n/a



DECLARATION FOR PATENT APPLICATION

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As the below named inventor, I hereby declare that:

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My residence, post office address and citizenship is as stated below next to my name;

I believe that I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled:

THERMAL PROCESSING SYSTEM AND CONFIGURABLE VERTICAL CHAMBER

the specification of which:

☐ is attached hereto.
☒ was filed on:
as Application No.:
and was amended on:

July 10, 2003

PCT/US2003/021575

(if applicable).

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 C.F.R. § 1.56.

Prior Foreign Application(s)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate, or § 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application(s) for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Country	Application Number	Foreign Filing Date (DD/MM/YYYY)	Priority Claimed		Certified Copy Attached	
			Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			Yes <input type="checkbox"/>	No <input type="checkbox"/>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Prior Provisional Application(s)

I hereby claim priority under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

Application Number	Date of Filing (day, month, year)
60/396,536	July 15, 2002
60/428,526	November 22, 2002

Prior United States Application(s)

I hereby claim priority under Title 35, United States Code, §120 of any United States application(s), or § 365(c) of any PCT international application designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application Number	Date of Filing (day, month, year)	Status - Patented, Pending, Abandoned

All correspondence and telephone communications should be addressed to Maria S. Swiatek at the address corresponding to Customer Number 32940 currently: DORSEY & WHITNEY LLP, Intellectual Property Department; Four Embarcadero Center, Suite 3400, San Francisco, California 94111-4187; telephone number (650) 494-8700; facsimile number (650) 494-8771.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature _____ Date _____

Full Name of
First Inventor: Du Bois Dale R.
(Family Name) (First Given Name) (Second Given Name)

Citizenship: US Citizen

Residence: Los Gatos, California

Post Office
Address: 14285 Mulberry Drive
Los Gatos, California 95032

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Signature _____ Date **OFFICE OF PETITIONS**

Full Name of
Second Inventor: Nam Jamie H.
(Family Name) (First Given Name) (Second Given Name)

Citizenship: US Citizen

Residence: Scotts Valley, California

Post Office
Address: 104 B Saint Augustine Way
Scotts Valley, California 95066

Signature  Date 1/27/05

Full Name of
Third Inventor: Wildman Craig
(Family Name) (First Given Name) (Second Given Name)

Citizenship: US Citizen

Residence: Sunnyvale, California

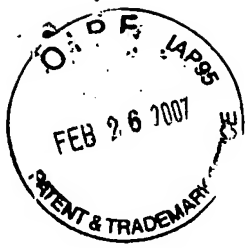
Post Office
Address: 1729 Karamenos Drive
Sunnyvale, California 94087

1076472

Signature _____ Date _____
Full Name of
Fourth Inventor: Qiu Taiquing
(Family Name) (First Given Name) (Second Given Name)
Citizenship: US Citizen
Residence: Los Gatos, California
Post Office
Address: 135 Riviera Drive, Apt. 328
Los Gatos, California 95032

Signature _____ Date _____
Full Name of
Fifth Inventor: Kowalski Jeffrey M.
(Family Name) (First Given Name) (Second Given Name)
Citizenship: US Citizen
Residence: Aptos, California
Post Office
Address: 122 Zanzibar Road
Aptos, California 95003

Signature _____ Date _____
Full Name of
Sixth Inventor: _____
(Family Name) (First Given Name) (Second Given Name)
Citizenship: _____
Residence: _____
Post Office
Address: _____



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY

In re application of:

Dale Du Bois et al.

Application No. 10/521,619

Filed: July 10, 2003 (International Filing date)

For: THERMAL PROCESSING SYSTEM
AND CONFIGURABLE VERTICAL
CHAMBER

Art Unit: To be assigned

Examiner: To be assigned

Docket No.: A-71748/MSS

October 6, 2006

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT OF FACTS BY MARIA SWIATEK TO SUPPORT
RENEWED PETITION UNDER 37 C.F.R. § 1.47(A)**

Sir:

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Despite these efforts, I have not received the Declaration and Assignment executed by Mr. Kowalski.

Respectfully submitted,

Date: October 6, 2006

By:



Maria S. Swiatek, Reg. No. 37,244

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Suite 1000
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